

A Manager's Guide to Employee Retention & HR in Montana

Presented by Michelle Edmunds, SPHR



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- Introduction
- HR Laws
- Best HR Management Practices
- Employee Retention

HR in small businesses: Why is it so crucial?

- Many small business owners have direct responsibility in the HR arena or provide oversight.
 - As a result of the absence of organized and widely published standards, many small business owners are challenged to decide the best way to deal with the people problems their businesses experience.
- HR has few rules on how to operate.
- HR problems can result in law suits which are not manageable for small businesses.

The Problem

- Because of this absence of standards, many small business owners look to peer organizations or trade or professional organizations for ideas or guidance.
 - Copying policies.
 - Doing so can be a disservice or can even be fatal to your organization.
- Today, I will share some of the things I believe many small businesses don't know they don't know.

Unlike many other areas of management, HR rules are not universal in application:

- Some rules apply only to larger organizations
- Most federal rules have a “trigger” that must be satisfied for coverage to exist.
- Examples:
 - EEO laws require 20+ employees
 - FMLA requires 50
 - FLSA generally requires \$500, 000+ in revenue

The location of an organization can require special rules to be applicable.

- Some rules are national, others do or don't apply given the state or even city in which you operate.
- Montana has many rules that are shared by either no other state or a small minority of states.

Montana Special Rules

- Employers must apply Montana rules to Montana based employees, regardless of where “corporate” is located. Example: Hotels
- In some cases, both federal and state standards apply.
 - If they differ and apply to your organization, you apply the one that is more employee friendly.

Montana Human Rights

- Montana has an expanded list of protected classes:
- All business may not discriminate on the basis of:
 - race, color, religion, creed, genetic history, sex, *any* age*, marital status*, physical or mental ability, or pregnancy or national origin
 - in Helena, sexual orientation is protected
 - *= Montana rule
 - Discrimination need not be intentional to be illegal.
- Pre-employment inquiries & physicals subject to ADA.
- Background checks must adhere to FCRA rules.
- Some local jurisdictions go beyond federal and state law.

Montana Human Rights Continued

- Butte, Bozeman, Helena and Missoula protect sexual orientation.
- Montana protects all ages.
 - Discrimination against younger workers is a violation of MT law.
- Montana protects marital status.
 - Marital status is making an employment decision based on:
 - Whether a person is single, married or divorced, OR
 - The identity or occupation of the individual's spouse.
- Nepotism policies may be unlawful.
- Under FMLA, both spouses get full benefits.

Wage and Hour

- Montana's minimum wage is higher than federal and is adjusted as often as annually.
- Montana's lists of overtime exemptions differ.
 - Some groups who might be exempt under federal law are not under Montana law.
 - One example would be a computer programmer earning \$1000 a week. Montana requires a minimum wage of \$1105.20.
 - Employees may not volunteer.
 - Except to a non-profit they do not already work for.
 - True volunteers may not receive compensation exceeding 20% of the wages paid to a regular employee doing the job.

Wage and Hour

- Montana allows payroll to be as late as 10 days following the close of the pay period.
 - If an employee quits, you may pay them on the next payday or within 15 days.
 - If an employee is terminated, they are due pay within 4 hrs or at the end of the shift, whichever is earlier but an employer may, however, extend with a written policy.

Wage and Hour

- Wage Deductions
- Employers may not:
 - Have a use it or lose it vacation policy (if private).
 - Charge employees or require kickbacks for reasons that benefit the employer.
- Free or clear payment of wages
 - Example: employee is required to wear a uniform that is not “street wear” or the uniform requires special handling to clean.

Wage and Hour

- **Electronic wages**
- Montana prohibits mandatory receipt of wages by electronic transfer
 - Employers must have written authorization
 - Employees may change their mind at any time
 - Debit cards may be hard to justify unless they are able to disburse all the wages fee free
- **No time card?**
- In a recent case, the Montana Supreme Court found the Dept of Labor's decision to deny overtime to an employee when the employee failed to submit time records to be contrary to established law.
 - The employee's failure to submit time records did not absolve the employer of its duty to maintain records of his hours for purposes of wage and hour laws.
 - The appropriate remedy when an employee's claimed working hours lack credibility is to reduce those hours to the extent they lack credibility- not to deny the employee's claims altogether.
 - (Arlington v Miller Trucking)

**Only the guy who isn't
rowing has time to rock
the boat. - Jean-Paul
Sartre**

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Discipline

- Discipline is the process used to enforce company rules and expectations.
 - Informal discipline is the most common: coaching, counseling, training
 - Formal (punitive) discipline includes warnings, demotions, suspensions and terminations.
 - “Good cause” standard applies if non-probationary.
- It is critical that supervisors follow established policies consistently.
 - Not doing so can create wrongful discharge liability.
- Insubordination v Self Help

Discipline and Termination

- Montana is the only state without employment at will.
 - The Wrongful Discharge Act requires employers to have a legitimate job related reason for terminating employees.
 - Probation defaults to 6 months but does not exempt employee from coverage of policy provisions or other laws.
- If requested, Montana employers must state reasons for termination in writing.
- Ultimatums to quit or be fired are usually considered terminations for both WDFEA and UI purposes if the employee had no option to remain in employment.

Probation

- Probation is a period of time during which employees are observed for their ability to meet performance and conduct expectations.
 - During probation, the obligation to establish good cause to terminate is reduced - but not eliminated.
 - Reason for termination must be true and non-discriminatory.
 - New hires should serve an initial six month probation regardless of status as permanent, short-term, temporary or seasonal.
 - Probation can be extended.
 - Initial probation not same as promotion or disciplinary probation.

Wrongful Discharge

- Wrongful Discharges can result in penalties of up to:
 - Four year's wages
 - Minus the amount the individual did or reasonably could have earned in the interim.

Good Cause

- If the following statements are true, the employer will be better prepared to defend a termination:
 - Forewarning: the employee knew the expectations and rules and the likely consequences.
 - Enforceability: the rule being enforced relates to a legitimate, job related purpose and does not violate public policy.
 - Proven: the employer investigated to ensure the employee was in fact guilty of the alleged offense.
 - The employee was given an opportunity to explain their actions.

Good Cause Cont.

- Equal Treatment: the employer treated similarly situated employees alike.
- Appropriate Response: the employer chose a corrective action no more or less stringent than was reasonable likely to make the offending behavior cease and not reoccur.
- Documentation: the employer documented and retained proof that the steps above were followed.
- Employers MUST document day to day issues.

Grievance Procedures

- Under the WDFEA, an employer with a complaint resolution (grievance) procedure might be able to limit its exposure by providing a copy of the procedure to the discharged employee within seven days of termination.
 - The discharged employee's failure to initiate or exhaust the process is a defense to suit.
 - Employees must follow all the steps of the described process.

Crabby Road

2-11-07

*If you don't have anything nice
to say, you can probably get
a job in human resources.*



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Privacy

- Montana's Constitutional Right of Privacy:
 - Drug and alcohol testing is limited to seven identified categories of employees.
 - A detailed policy is required 60 days before testing is allowed.
 - Testing is limited to five circumstances.
 - Requires all parties to a conversation to give consent to its recording (with exceptions).

ADA

- Any disability which prevents a qualified applicant or employee from performing an essential job function requires an “interactive conversation” to assess whether any reasonable accommodation would allow the person to perform the essential functions of the job.
- Leave to recover from an injury or medical condition may be a reasonable accommodation.
- Reasonable accommodation does not require an employer to waive safe, effective or cost efficient operations.
 - Employers may, however, be required to justify classifying something as “essential”.

Harassment

- Harassment of employees and any other persons based on their gender, race, national origin or other protected class membership is prohibited.
- Harassment can be perpetrated by:
 - Supervisors
 - Co-workers
 - The Public
 - Employees towards the Public
- Making decisions based on sexual favoritism is unlawful.
- The intent of the perpetrator may be irrelevant, the impact on a reasonable person determines lawfulness.
- Behavior must be severe or pervasive to be a violation.

Harassment cont.

- Harassment includes unwelcome verbal or physical conduct when:
 - Adverse employment decisions occur, OR;
 - The conduct interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment.
- Supervisors held to higher standard than co-workers including off the job liability.
 - If a supervisor harasses, the company may be presumed to have acted.
 - If managers are aware of behavior and do not act, the behavior is presumed acceptable to the employer.

Attendance

- Basic Rule: Employees are required to be present when scheduled unless they have the employer's permission to be absent.
 - Call offs are subject to approval.
 - Supervisors may request documentation that reason for call of is genuine and earlier notice not possible.
- Some absences are required if the employee qualifies.
- Other absences are up to the company and its policies.

Medical Marijuana

- Employers need not accommodate medical marijuana.
- Employees may be terminated for off-duty use.
- Employees may not operate/drive vehicles.

What is NOT Required of Businesses

- No laws require businesses to:
 - Provide smoke, rest or meal breaks (unless a CDL).
 - Provide access to personnel records.
 - Provide pay for time not worked (i.e., holidays, vacation or sick leave) unless exempt.
 - Pay overtime for over 8 hrs work per day.
 - Pay premium pay for working on a holiday or weekend or out of town location.
 - Maintain the shift or job duties a person was initially hired to work.

Employee Retention

- Turnover is expensive, stressful and time consuming.
- How do you keep your employees?
- How do you compete for employees in your market?

**Treat employees like they
make a difference.
And they will...**

Jim Goodnight

Employee Retention

- Offer a competitive benefits package that fits your employees' needs.
- Provide some small perks.
- Use contests and incentives to help keep workers motivated and feeling rewarded
- Conduct “stay” interviews. In addition to performing exit interviews.
 - Why did you come to work here? Why have you stayed? What would make you leave? And what are your nonnegotiable issues? What about your managers? What would you change or improve? Then use that information to strengthen your employee-retention strategies.

Employee Retention

- Promote from within whenever possible.
- Foster employee development.
 - This could be training to learn a new job skill or tuition reimbursement to help further your employee's education.
- Create open communication between employees and management.
- Get managers involved.
 - Require your managers to spend time coaching employees, helping good performers move to new positions and minimizing poor performance.

Employee Retention

- Communicate your business's mission.
 - Feeling connected to the organization's goals is one way to keep employees mentally and emotionally tied to your company.
 - Start with WHY.
- Offer financial rewards.
- Make sure employees know what you expect of them.
- Hire a human-resources professional.

**A person
who feels
appreciated
will always
do more
than what is
expected.**

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HR Tools for Small Businesses:

- Your employees! 😊
- Personnel policies
 - Documentation of performance and conduct issues
 - Continuing education on employment law that affects your business
 - If you don't know ASK – utilize Job Service, other HR professionals, Montana State Government online tools

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www.WeStaffMT.com
michelle@personnel-plus.com

